

REMARKS

Claims 1-7 are pending. Claims 1-6 are stated by the Examiner to be allowable. Claim 7 is amended herein. The amendment adds no new matter.

Applicant submits herewith a Terminal Disclaimer of patent term extending beyond that of U.S. Patent No. 4,925,789.

Rejection under 35 U.S.C. §112, First paragraph:

Claim 7 is rejected under 35 U.S.C. §112, first paragraph for lack of written description. The Office Action states that “claim 7(b) includes the limitation of “without the need of performing a preliminary target microbe growth step,” but that “the present specification as originally filed provides no basis for such a negative limitation.” Applicant respectfully disagrees.

Applicant submits that the specification provides support for performance of the claimed methods without performing a preliminary target microbe growth step at, for example, page 3, lines 14-27, which state:

The testing medium also includes a minor amount of a growth accelerant which will boost the target microbes and all of the other viable microbes in the sample *through lag phase toward log phase of growth in the testing procedure*. It will be understood by those skilled in the art that when a sample, such as environmental samples, are tested in accordance with the procedure of this invention, is combined with the testing medium of this invention, all of the microbes in the sample will lapse into a lag phase of growth, due to the newness of the environment they are in. In the lag phase, none of the microbes will significantly multiply and grow until they adjust to the new environment. *This dormant stage, which all of the microbes, including the targets, encounter, causes the test period to be undesirably long.* The growth accelerant which is incorporated into the medium of this invention is a combination of natural plant extracts, vitamins, and minerals which hasten the transition of the target microbes, and all of the other microbes in the sample, *through the lag phase and into the log phase so as to lessen the time duration from the inception of the test to the alteration (or no alteration) of the sample which indicates the presence (or absence) of the target microbes in the sample.* (Emphasis added)

Thus, the specification emphasizes that the testing procedure involves a single culture step, with the microbes going “through lag phase toward log phase of growth *in the testing procedure*,” to the alteration (or no alteration) of a characteristic, without performing a preliminary target

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microbe growth step. In view of this support, Applicant respectfully requests the withdrawal of the §112, first paragraph rejection of claim 7.

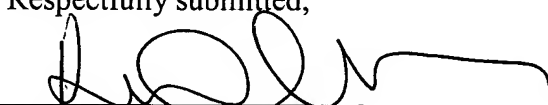
Rejection under 37 C.F.R. §112, Second Paragraph:

Claim 7 is rejected as indefinite under 37 C.F.R. §112, second paragraph for reciting the phrase “without the need of performing” because it “does not define what sort of need might occur.” Applicant has taken the Examiner’s suggestion and amended this language to recite “without performing.” Applicant respectfully requests withdrawal of this rejection.

In view of the above, Applicant submits that all issues raised in the Office Action have been addressed herein. Applicant respectfully requests reconsideration of the claims.

Respectfully submitted,

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